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In the Supreme Court of the United States

October Term, 1943.

Case No. 296.

CHARLES J. MACH, *Debtor, Petitioner,*

vs.

THE ABBOTT COMPANY, a corporation, *Respondent.*

RESPONDENT'S STATEMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

THE ABBOTT COMPANY, a Corporation,
By E. H. BOYD,
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RESPONDENT'S STATEMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent, The Abbott Company, a corporation, respectively prays that the petition for writ of certiorari, heretofore filed herein on August 26, 1943, by Charles J. Mach, debtor, petitioner, asking a review of the judgment of the United States Circuit Court of Appeals for the Eighth Circuit, made and entered in the above entitled cause on June 21, 1943, be denied.

Summary and Statement of the Matter Involved.

With respect to that part of the petition for writ of certiorari designated "Summary Statement of the Matter Involved," at pages 2 to 4, both inclusive thereof, respondent desires to point out several errors. Beginning at line 5 on page 2, there is found the following statement:

> "The District Court in its order or judgment, without finding that all of the conditions set forth in Section 75 (s) (1) of the Bankruptcy Act (11 U. S. C. A., Sec. 203 [s] [1]) has been complied with, began the three-year stay period, provided under Section 75 (s) (2) of the Bankruptcy Act (11 U. S. C. A., Sec. 203 [s] [2]) on March 22, 1940, the date the appraisal was filed, rather than on May 29, 1942, the date the order or judgment was entered. In addition, the District Court held that rentals began on October 27, 1938, under a previous ruling of the court, and as a result the debtor was delinquent in rentals."

A similar erroneous statement is made in the last sentence on page 3. Respondent denies that these statements correctly reflect the order or judgment of the District Court. The record plainly shows that the District Court found that with the making and filing of the appraisal on March 22, 1940, all the conditions set forth in Section 75 (s) (1) of the Bankruptcy Act (11 U. S. C. A., Sec. 203 [s] [1]) had been complied with and that, therefore, as a matter of law, the three-year stay period *had begun* to run from and after March 22, 1940, and would terminate on March 22, 1943 (R. 118-122). The District Court further found, as shown by the record (R. 118-112), that under a previous order of the court, not appealed from and final, petitioner was then delinquent in the payment of rentals and, therefore, ordered the payment of such delinquent rentals.

Further, at page 2 of his petition, petitioner states, in effect, that on appeal the Eighth Circuit Court of Appeals affirmed the judgment or order of the District Court "in retroactively beginning the three-year stay on March 22, 1940," and modified the District Court's judgment or decree by beginning the payment of rentals on March 22, 1940. The record (R. 136-143) shows that the Eighth Circuit Court of Appeals simply held (as the District Court had) that in fact and in law the three-year stay period *had begun* to run from and after March 22, 1940, and that said court neither held nor suggested that the District Court had retroactively begun the three-year stay period.

On the question of rentals, it will be obvious to this Court from an examination of the record that the Circuit Court of Appeals merely determined that the rentals should be computed on the basis of the three-year stay period beginning on March 22, 1940, instead of October 27, 1938, and to that extent modified the order of the District Court (R. 142, 143).

On page 4 of the petition it is stated, in effect, that the Eighth Circuit Court of Appeals erroneously considered that petitioner had contended before the District Court that the three-year stay period began on March 22, 1940, when in fact petitioner had contended before the District Court that the stay period would not begin until the date of the District Court's order, May 29, 1942. That the Circuit Court of Appeals in no way failed to understand the position taken by petitioner before the District Court and fully understood that the petitioner had attempted to change ground following the hearing on May 13, 1942, is apparent from the record (R. 141). There the Circuit Court of Appeals specifically points out that the petitioner did not except to the portion of the District Court's order of May 29, 1942, holding that the stay period had begun to run on March 22, 1940, although the petitioner,

at the same time, had taken exceptions to other portions of said order. At the same place (R. 141) the Circuit Court of Appeals observed the change in position on the part of the petitioner, pointing out that petitioner was then before the Circuit Court of Appeals claiming that the three-year stay period could not begin to run until the filing of the District Court's order on May 29, 1942.

Jurisdiction.

Respondent concedes the jurisdiction of this Court to hear and dispose of the petition for writ of certiorari.

Questions Presented.

On page 4 of his petition petitioner under the above heading sets forth four questions. Petitioner has misapprehended the scope and function of a petition for writ of certiorari. Necessarily, such petition must be confined to the questions presented to and passed upon by the Circuit Court of Appeals. An examination of the transcript of the record and the briefs filed in the Circuit Court of Appeals will make it very apparent that actually only three questions were presented originally to the District Court and on appeal to the Circuit Court of Appeals. Likewise, it will plainly appear that these three questions were the only ones determined by the Circuit Court of Appeals. It follows, therefore, in this Court that petitioner, in endeavoring to submit questions which are different and additional to those considered and passed upon by the courts below, is improperly and unnecessarily confusing and complicating the disposition of this case. The three questions previously referred to as having been submitted to and passed upon by the two lower

courts were: the date of the commencement of the stay period, the computation of delinquent rentals and the disallowance by the conciliation commissioner of the petitioner's claim for expenses in connection with the upkeep of the property. Petitioner does not make a single reference in his petition or supporting brief and argument to the third question above enumerated, and has abandoned his previous contention on that point. It accordingly follows that the ruling of the Circuit Court of Appeals on the two questions set out just above are the only ones which need be considered by this Court in the disposition of the petition. These correspond very roughly with petitioner's first and fourth questions.

Reasons Relied on by Petitioner for Allowance of Writ.

At pages 5, 6 and 7 of the petition and under the heading "Reasons Relied on for Allowance of Writ," petitioner sets forth virtually the same statements and contentions as are subsequently found and discussed in detail under the portions of his brief designated "Points and Authorities" and "Argument." Inasmuch as these portions of petitioner's brief will be given detailed attention hereafter, respondent omits extended reference at this point to that portion of the petition designated "Reasons Relied on for Allowance of Writ."

Prayer.

Wherefore, respondent respectfully prays that this Court may make and enter an order denying the petition for writ of certiorari filed herein on August 26, 1943, by Charles J. Mach, debtor, petitioner; that it may recover its costs and for such other and further relief in

the premises as to this Honorable Court may seem just and proper.

Respectfully submitted,

THE ABBOTT COMPANY, a Corporation,
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